

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling	)	WT Docket No. 12-37
Interpreting the Definition of “Commercial	)	
Mobile Radio Services” as Applied to	)	
NextG Networks of California, Inc.’s	)	
Distributed Antenna Systems and Other	)	
“Small-Cell” Solutions	)	

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS  
OFFICERS AND ADVISORS**

The National Association of Telecommunications Officers and Advisors (“NATOA”)<sup>1</sup> submits these comments in response to the Public Notice<sup>2</sup> in the above-captioned proceeding, released February 16, 2012.

**I. INTRODUCTION**

NextG Networks of California (“NextG”) and the City of Scottsdale, Arizona (“City”) have been involved in an on-going dispute concerning the ability of NextG to place wireless

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<sup>1</sup> NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure development.

<sup>2</sup> Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling Interpreting the Definition of “Commercial Mobile Radio Service” as Applied to NextG Networks of California, Inc.’s Distributed Antenna Systems and Other “Small-Cell” Solutions, *Public Notice*, WT Docket No. 12-37, DA 12-202 (rel. Feb. 16, 2012) (“Public Notice”).

communications facilities (“WCF”) in the City’s rights of way. On December 21, 2011, NextG filed with the Commission a Petition for a Declaratory Ruling (“Petition”)<sup>3</sup> that it is NOT a provider of “commercial mobile radio service” (“CMRS”) as defined in Section 20.3 of the Commission’s rules.<sup>4</sup> Such a finding *could* potentially exempt the company from local fees imposed by the City.

Subsequently, the Commission published a Public Notice seeking comment solely on the issue of whether NextG is a CMRS as defined by Section 20.3; these comments are filed in response to same.

## **II. ARGUMENT**

NATOA has reviewed and strongly supports the comments filed by the City of San Antonio, Texas in this proceeding. NATOA, too, believes that NextG has failed to present the Commission with sufficient documentation that unambiguously establishes the true nature of the company’s DAS and other small-cell solution services. As San Antonio points out, discrepancies made by NextG in various proceedings, including this one, underscore the fact that the company has failed to establish that it is not a CMRS.

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<sup>3</sup> Petition for Declaratory Ruling, Petition of NextG Networks of California, Inc. for a Declaratory Ruling that its Service is Not Commercial Mobile Radio Service (filed Dec. 21, 2011) (“Petition”).

<sup>4</sup> Section 20.3 defines a CMRS as: “A mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this section.” 47 C.F.R. § 20.3.

Additionally, Section 332(d)(1) of the Communications Act of 1934, as amended, defines a “commercial mobile service” as “any mobile service (as defined in Section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.” 47 U.S.C. § 332(d)(1).

For example, as the City observed, based on NextG's own admissions, it appears that "at least part of their offerings involve the provision of mobile services within the meaning of the Federal Telecommunications Act."<sup>5</sup> Prudence dictates that the Commission take no action until all relevant evidence concerning the company's services is provided to the Commission and made available for public review and comment.

## **II. CONCLUSION**

NextG has failed to provide all the accurate information necessary about all of its services in order for the Commission to take action on its petition at this time. The Commission must not grant this petition, in whole or part, unless and until such information is provided. Further, in the event the Commission does take any action in this proceeding, we urge the Commission to limit its ruling solely to the specific facts presented in this case.

Respectfully submitted,



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April 2, 2012

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<sup>5</sup> Petition at Exhibit 2.